was the proceeds in £20 notes, and in consequence the indictment was held to be bad. It was intended to put an end to this unsatisfactory position by the definition of "property" in Sec. 1 of the Larceny Act, 1861, where it is defined as including:—

> "Not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise."

This definition is re-enacted in Sec. 46 of the Larceny Act, 1916, and was the subject of argument in *Rex* v. *Klein*. The defendant was charged with receiving property obtained under circumstances amounting to a misdemeanour. Thus far the case came within *Rex* v. *Kutas* (supra). The misdemeanour alleged was the fraudulent obtaining of money from the public by the Broad Street Press, Ltd. The evidence showed that large sums of money deriving from this source eventually reached the hands of Klein, but it could not be proved that any particular sum was in effect the moneys of the public "obtained under circumstances amounting to misdemeanour." It was argued for the defence that the prosecution ought to have "earmarked" each particular sum of money as being the actual sum derived from each of the various fraudulent transactions undertaken by the Broad Street Press. The Court of Criminal Appeal, however, held that the facts were just such as were intended to be dealt with by the definition of "property" in Sec. 46 of the Act of 1916. The Court considered that the prosecution had discharged the onus of proof once it was shown that the sums alleged to have been received were to the knowledge of the appellant the fruit of the principal misdemeanour, and that it did not matter how the money had been dealt with during the interval between its being taken from the public and its receipt by the appellant.

A consequence—and a satisfactory consequence to the public—of *Rex* v. *Klein* seems to be that the law will not allow the recipient of the proceeds of an elaborate financial fraud (who has knowledge of the source of such proceeds) to escape through the complexity of his crime, but will subject him to the same penalties as those applicable to the receiver of stolen goods. Thus has the combination of careful legislation, with capable judicial interpretation, achieved the desired result of making equally punishable acts, which are in all substantial respects the same.

[APPELLATE CIVIL JURISDICTION]

MURISON, C.J., THORNE and TERRELL, JJ.

CHEW CHENG SWEE .....**Appellant**

and

CHAN CHYE NEO.....**Respondent**

[SINGAPORE MAGISTRATE'S APPEAL No. 46 of 1931]

Appeal—maintenance—Magistrate's Order under Section 38, Ordinance No. 96 (Minor Offences)—Criminal Case or Matter—whether appeal lies—Criminal Procedure Code, Chapter XXVIII—English, Indian, and Straits Settlements Laws discussed.

Under S. 38(1) of Ordinance No. 96 (Minor offences), if any person neglects or refuses to maintain his wife or legitimate child unable to maintain itself, a District Court or Police Court upon due proof may order such person to make a monthly allowance for the maintenance of his wife or such child in proportion to the means of such person as to the Court seems reasonable. By sub-section (2) of this section a District Court or Police Court may make an order for the maintenance of an illegitimate child with a monthly allowance not exceeding $10. Sub-section (7) further empowers either of the Courts to vary the allowance ordered to be paid under the principal Section.

Held, that proceedings under any of the sub-sections above referred to are not proceedings in a criminal case or matter and hence no appeal lies under Chapter XXVIII of the Criminal Procedure Code.

Semble, if default is made in payment of the amount ordered to be paid, the application to enforce payment of arrears in a Criminal case or Matter in that the Court has power to issue a warrant for the levy of the amount by distress or sentence the defaulter to a term of imprisonment.

Yong Ah Lon v. Ho Kong Pui, (Singapore Magistrate's Appeal No. 42 of 1930), overruled.

Chan Chye Neo, the wife of the appellant, commenced proceedings in the Criminal District Court under Ordinance No. 96 (Minor Offences) for maintenance. An order under Section 38 (1) of the Ordinance was made by the District Judge on the 10th May 1929 for payment by the appellant to her of $150 per month for maintenance. On the 29th August 1929 the appellant applied under S.38 (7) of the said Ordinance for a reduction of the amount ordered to be paid under the Order of Court of the 10th May 1929. The application was refused. On the 7th August 1930 a fresh application of a similar nature was made by the appellant but without success. Against the last order of refusal the appeal was brought.

The appeal came before Mr. Justice Terrell sitting as a single Judge but as two points, viz. (1) whether the proceedings are Criminal or Civil, and (2) whether in the latter case an appeal would lie at all under S.295(1) of the Criminal Procedure Code, appeared to His Lordship to be of considerable importance, His Lordship therefore referred the matter to the full Court under S.299 (3) of the Criminal Procedure Code. The only issue which was fully argued before the Court of Appeal was whether the proceedings taken by the respondent in the District Court were Criminal or Civil.

The appeal was uninamously dismissed with costs of proceedings before Terrell, J.

Page for Appellant.

Deputy Public Prosecutor and Knowles (Fung with him) } for Respondent.

Cur. Ad. Vult.

MURISON, C.J. This is an appeal brought under Chapter XXVIII of the Criminal Procedure Code. It was referred to a full Court by Mr. Justice Terrell.

The facts are simple. The respondent is the appellant's wife. On 10th May, 1929 an order was made by the District Judge under section 38 (1) of Ordinance No. 96 (Minor Offences) for the payment by the Appellant to the Respondent of $150 - p.m. for maintenance. The material Sub-sections are as follows:—

38 (1). If any person neglects or refuses to maintain his wife or legitimate child unable to maintain itself, a District Court or Police Court upon due proof thereof may order such person to make a monthly allowance for the maintenance of his wife or such child as aforesaid in proportion to the means of such person as to the Court seems reasonable.

(2). If any person neglects or refuses to maintain his illegitimate child unable to maintain itself a District Court or Police Court on due proof thereof may order such person to make such monthly allowance not exceeding ten dollars as to the Court seems reasonable.

(3). Such allowance shall be payable from the date of such neglect or refusal or from such later date as the Court directs.

(4). If any person neglects to comply with any such Order the Court may for every breach of the Order by warrant direct the amount due to be levied in the manner by law provided for levying fines imposed by a Police Court, or may sentence him to imprisonment of either description for a term which may extend to one month for each month's allowance remaining unpaid.

On the 29th August, 1929 the Appellant applied under Section 38 (7) of Ordinance No. 96 (Minor Offences) for a reduction of the amount payable by the order of 10th May 1929. The application was refused. A similar application on 7th August 1930 was adjourned sine die. On the 8th July 1930 the Respondent under Section 38 (4) of Ordinance No. 96 (Minor Offences) and Section 273 (2) of the Criminal Procedure Code obtained a Warrant for the levy of execution of arrears $1,800 under the existing Order for maintenance. She levied for these arrears. Then on 8th September the adjourned application for reduction of this amount ordered on 10th May 1929 came on for hearing. The District Judge again refused the application.

It is against this Order of refusal that the present appeal is brought. The appeal is based upon the mechanical grounds first that the Order is against the weight of evidence and secondly, that the Order is wrong in law and fact.

The only point argued before us was that the proceedings were in their nature civil and not criminal and that therefore no appeal lies from the Order of 8th September 1931 under Chapter XXVIII of the Criminal Procedure Code.

The Critical sections in Chapter XXVIII are first section 289, subsection (1) of which is as follows:—

"289 (1) No appeal shall lie from a judgment, sentence or order of a Criminal Court except as provided for by this Code or by any other Law for the time being in force," and section 295 the material part of subsection (1) of which is as follows:—

(1) "Except in the cases in section 289, 292 and 293" (the latter both immaterial) "any person who is dissatisfied with any judgment, sentenco or order pronounced by any District Court or Police Court in a criminal case or matter

to which he is a party may prefer an appeal to the Supreme Court against such judgment, sentence or order....."

In my opinion the plain words of the subsections 1-4 of Section 38 ought to govern this case. These Subsections enact first that an Order can be made for the payment of an allowance. So far, without doubt this is a civil matter and a civil debt is created. Then subsection 4 dealing with the method of recovery of any amount due and unpaid invokes for convenience the procedure provided for the recovery of Police Court fines. The method for recovery of the debt appears to me to be a matter entirely subsidiary to the substantive law which provides for the making of a civil order for the payment of money. To call the whole case a criminal case would be in my opinion to let the accident outweigh the essential. The case, is, I think, a civil though the method of recovery is a criminal process.

We have been referred to various English cases of which *Seaman* v. *Burley* (1896) 2 Q.B., 344 is an example. In this case it was held that a judgment on a special case stated by the justices on an application to enforce payment of a poor rate by warrant of distress was a criminal cause or matter within Section 47 of the Judicature Act 1873 inasmuch as the proceedings before the justices might end in imprisonment of the person in default. The material part of Section 47 is as follows:—

"and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign."

Now in *Seaman* v. *Burley* it is of the utmost importance to notice that the Appellant had not paid the amount of the rate, and that he was summoned before the Justices in petty sessions who granted the warrant of distress. Lord Esher M. R. said: "The question is really one of procedure. The question is whether the proceeding which was going on was a criminal cause or matter." Then he instances a question of assault which can be either civil or criminal. If a civil action is taken, civil considerations govern. If criminal, criminal considerations. And in the case before him it was a criminal proceeding because it might end in imprisonment. Once the proceeding was criminal (as recovery for payment was in that case and is in our case) the original civil nature of the obligation could not be set up as a bar to the criminal nature of the proceedings.

But in our case was are not dealing with the recovery of the debt. That would be a criminal proceeding both upon the plain meaning of section 38(4) and upon the authority of *Seaman* v. *Burley*. We are concerned here with an application for the variation of the amount of maintenance to be paid. We are still so to speak, in the civil half of the case. If there had been an application to recover the debt by the process indicated in section 38 (4) we should have passed into the Criminal half of the case. The former half of the case can go as far as the law relating to civil appeals allows. The latter half goes as far as the law relating to Criminal appeals allows.

One cannot answer the question whether cases of this kind are civil or criminal until, as Esher, M. R. said, we know whether the actual proceeding before the Court is civil or criminal, that is whether it is concerned with the amount (if any) payable or with the recovery of the amount found due.

We are concerned with the civil half, that is with an appeal against refusal to vary the amount payable. We are not concerned with the recovery of anything found due.

For these reasons I am of opinion that no appeal lies under Chapter XXVIII of the Criminal Procedure Code.

I would dismiss the appeal with costs of the proceedings only before Mr. Justice Terrell, not in this Court. The Crown does not ask for any costs.

THORNE, J. This was an appeal from the refusal of the District Judge Singapore to reduce the amount of maintenance ordered to be paid by the appellant to the respondent on the 10th May 1929.

The appeal came on for hearing before Terrell, J. when two questions emerged, (1) whether an appeal lay at all, and (2) whether the Crown was a necessary respondent to the appeal if it lay; and in view of the importance of the questions thus raised the appeal was referred to the full Court.

The parties are husband and wife and on the 10th May 1929 the respondent obtained an order under section 38 (1) of Ordinance 96 (Minor Offences) for payment to her by the appellant of a maintenance allowance of $150/- a month. Applications were subsequently made to the District Judge by the appellant under subsection (7) of that section to reduce the amount of the allowance thus ordered, but the order was not varied. The last application by the appellant to reduce the amount of the order was refused by the District Judge on 8th of September, 1931.

From that refusal the appellant appealed.

The appeal was treated as an ordinary Magistrate's appeal and notice was accordingly served upon the Deputy Public Prosecutor as respondent to the appeal, who objected that he was not a necessary party to the appeal, and further that no appeal lay. Section 289 (1) of the Criminal Procedure Code provides as follows:—

"No appeal shall lie from a judgment, sentence or order of a Criminal Court except as provided for by this Code, or by any other law for the time being in force."

Section 295 (1) is as follows:—

"Except in the case of Sections 289, 292 and 293 any person who is dissatisfied with any judgment, sentence, or order pronounced by any District Court or Police Court in a Criminal case or matter to which he is a party may prefer an appeal to the Supreme Court against any such judgment, sentence or order, etc."

It is conceded that there is no provision for appeal unless the case falls within this Section. The question is then whether proceedings to recover maintenance, or to vary an order of maintenance already made, is a criminal case or matter within Section 295 (1).

Section 38 of Ordinance 96 (Minor Offences) empowered a District Court or Police Court to order a monthly allowance for the maintenance of a wife or legitimate child upon evidence of neglect or refusal. If the person so ordered to pay neglects to comply with the order the Court may for every breach of the order by warrant direct the amount to be levied in the manner by law provided for levying fines imposed by Police Court or may sentence the person to imprisonment and on the application of any person ordered to pay a monthly allowance, and on proof of change in the circumstances of such person his wife or child, the Court may make such alteration in the amount of the allowance ordered as it deems fit.

This section therefore provides a summary and convenient procedure for the enforcement against a husband or parent of his duties to maintain his wife and legitimate child.

It has been held in England that the proceeding against a putative father of an illegitimate child to obtain an order of affiliation and maintenance by magistrates is a civil proceeding (see *Regina* v. *Lightfoot*, 25 L.J. Magistrates Cases page 115. *Regina* v. *Berry*, 28 L.J. Magistrates Cases page 86, and the *Queen* v. *Fletcher*, Law Reports 1 Crown Cases reserved at page 320) and in India it has been held that proceedings by a wife against a husband for maintenance are in their nature civil (see *Tokee Bibee* v. *Abdul Khan*, Indian Law Reports 5 Calcutta page 536).

Counsel for the appellant relied on a number of local decisions, the first was *in re Sarkies* vs. *Johannes*, reported in S.S. Law Report page 19. This case is not of much assistance for the reason that a preliminary objection was taken that no appeal lay, but the objection was over-ruled, and it was held that an appeal lay under Section 85 of the Bankruptcy Ordinance.

The other local decisions were:

Rex v. *Thambiappan*, 13 S.S. Law Reports p. 17.

Rex v. *Shaik Mohamed*, 14 S.S. Law Reports p. 133 and an unreported case of the *Municipal Commissioners* vs. *Usoff Haji Ahmad* and *another*, Criminal Appeals 19 and 20 of 1924. In all these cases it was conceded that no appeal lay from a District Judge or Magistrate unless the case was a "criminal case or matter" within the meaning of Section 295 (1).

Counsel for the appellant also relied upon the case *Seaman* v. *Burley*, (1896) 2 Q.B. page 344. In that case the appellant being a person rated to a poor rate in the Parish of Paddington was summoned before the Justices in Petty Sessions who granted a warrant of distress for the amount of the rate, but stated a case for the Q.B. Division raising a question as to

the validity of the rate. The Divisional Court affirmed the order of the Justices from which an appeal was preferred to the Court of Appeal. On the hearing of the appeal objection was taken that no appeal lay for the reason that it was a criminal cause or matter within the meaning of Section 47 of the Judicature Act of 1873. Lord Esher, Master of Rolls, in his Judgment points out that the person rated might at an earlier stage of the matter have disputed his liability to the rate, and appealed to Quarter Sessions in which case there might ultimately have been further appeals both to the Court of Appeal, and to the House of Lords. This step however had not been taken by the appellant but he failed to pay the amount due and accordingly a summons was issued before the Justices whose powers were to issue a warrant of distress and in default of distress to impose imprisonment. The learned Judge points out that the question was really one of procedure and after reviewing the cases, which he says do not furnish an exhaustive definition, he concludes that when the proceeding before magistrates is one which may end in imprisonment it must be considered a criminal proceeding within the meaning of Section 47, and he repeats later that the cases shew the question to be not whether the proceeding *must* but whether it *may* end in imprisonment. It seems to me in that case itself at different stages the proceedings fell into two different categories, namely in so far as any question arose as to the amount of rate properly chargeable the proceedings were civil because they could not result in the imprisonment of the rate payer, but in so far as the proceedings were had to enforce payment these were criminal in character for the reason that they might result in the imprisonment of the defaulting rate payers.

I would apply that test to the present case and by analogy it seems to me that on an application for an order for a monthly allowance by way of maintenance the proceedings are civil since they cannot result in the imprisonment of the husband or father, but can only result in the making or refusal of any order. The same reasoning applies to an application to vary the amount of an allowance already ordered to be paid since the only order which can be made on such an application is that the order is either varied or affimed. In my view therefore neither of these proceedings is a criminal case or matter within the meaning of section 295 of the Criminal Procedure Code. If however the person ordered to pay fails to comply with the order the powers of the Police Courts are either to levy the amount or to impose imprisonment. An application to enforce payment of arrears due under an Order for maintenance is in my opinion a criminal case or matter in view of the fact that the Court may either levy, or sentence the defaulter to a term of imprisonment.

I have referred to Mr. Mallal's excellent publication, being the annotated criminal procedure code, and I observe that in the Notes to Section 295 it appears that in a Singapore criminal appeal, No. 42 of 1930, *Yong Ah Lon* v. *Ho Kong Fooi*, it is stated that an order under Section 38 of Ordinance 96 (Minor Offences) is an order in a criminal case or matter and an appeal will lie. I think it proper to state that this case was not quoted to the full Court, and if the facts of the case are parallel to those of the present appeal the decision is wrong and should be no longer regarded as authoritative.

It was suggested during the argument that the words " in a criminal case or matter to which he is a party " should be read disjunctively and not conjunctively. In other words that an appeal would lie in a criminal case, or any other matter to which the person dissatisfied is a party. I am of opinion that this is not the true interpretation of the Section. In my view the word " Criminal " governs both " case " and " matter," and that only a person who is a party to a criminal case or criminal matter has any right of appeal under this Section.

I am of opinion, therefore, that the objection of the learned Deputy Public Prosecutor succeeds and that no appeal lies from the refusal by the District Judge to vary the order for maintenance in this case.

In the circumstances it is unnecessary for me to express any opinion upon the merits of the appellant's case.

The appeal should stand dismissed with costs of the proceedings before Terrell, J. but not of this Court.

TERRELL, J. On May 10th 1929 the respondent, who is the principal wife of the appellant,

obtained an Order under Section 38(1) of Ordinance No. 96 (Minor Offences) for payment of a maintenance allowance of $150/- per month. On the 29th August, 1929 an application was made to have the allowance reduced. This application was refused.

An application was again made on the 7th August 1930 to have the amount of the maintenance reduced. This application was part heard before Mr. Wilson, District Judge and postponed sine die. Later the application was restored and was heard before Mr. Dodd, District Judge, on the 8th September, 1931, when the learned District Judge refused to vary the order. It is against such refusal that the appellant appeals to the Supreme Court.

The appeal was brought under Section 295 (1) of the Criminal Procedure Code the material portions of which are as follows:—

"Any person who is dissatisfied with any judgment, sentence or order, pronounced by any District Court or Police Court in a criminal case or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment, sentence or order for any error in law or in fact....."

The appeal originally came before me sitting as single judge but as the two questions (1) whether the proceedings were criminal or civil, and (2) whether in the latter case an appeal would lie at all under Section 295 (1) appeared to me to be of considerable importance. I referred the matter to full Court under Section 299 (3) of the Criminal Procedure Code.

On the hearing before the Full Court the Deputy Prosecutor, who had been served with the proceedings, argued that the proceedings were civil in character and that no appeal lay. It has been decided on several occasions in these Courts that under Section 295(1) an appeal will only lie if it is a 'criminal case or matter.'

The first reported case is that of *Rex* vs. *Thambiappan*, 13 S.S. L.R. page 17. In that case Sercombe Smith. J. held that an order of a Magistrate under Section 14(2) of the Labour Contracts Ordinance No. 1 of 1882 was not an order in a "criminal case or matter" and that therefore no appeal lay. This decision was followed by the full Court in the case of *Rex* vs. *Shaik Mohamed*, 14 S.S.L.R page 133. In that case, which was also under the Labour Contracts Ordinance No. 1 of 1882, learned Counsel for the appellant conceded that unless it was an appeal in criminal case or matter no appeal lay. His argument to the effect that an appeal under the Labour Contracts Ordinance was an appeal in a criminal case or matter was rejected.

The Court was also referred to an unreported case heard before a full Court consisting of Sir Walter Shaw, C.J. and Whitley and Barrett-Lennard, J.J. *Municipal Commissioners* vs *Usoff Hadjee Ahmad and another*, Criminal Appeals 19 and 20 of 1924. This was an appeal from an order of the District Judge made under section 362 (1) of Ordinance No. 135 (Municipal).

In all these cases it was conceded without argument that no appeal lay from a District Judge or Magistrate unless it was a "criminal case or matter."

Apart from authority I should have been inclined to read the words in Section 295 (1) of the Criminal Procedure Code "in a criminal case or matter to which he is a party" disjunctively and not conjunctively. That is to say, the section appears to contemplate that the jurisdiction of the Police Court is partly criminal and partly civil or only quasi-criminal, though the procedure is in every case that laid down by the Criminal Procedure Code. It would appear that an appeal is provided

(a) against conviction or sentence in a criminal case, or

(b) against an order in a matter to which any party who is dissatisfied with such order is a party.

This construction would be in accordance with the presumed intention of the Courts Ordinance and of the Criminal Procedure Code to provide an appeal from every decision of the District Courts and Police Courts except where the offences when criminal are of a trifling nature (see Schedule C of the Criminal Procedure Code) or where in civil cases the amount in dispute is under $100/-, but even in the latter cases the Supreme Court has a right of review (see section 13 of the Courts Ordinance).

It has also been pointed out by Sir John Bucknill in the case of Rex vs. *Shaik Mohamed*, 14 S.S.L.R. at page 134, that under section 9

(1) (e) of the Criminal Procedure Code the Police Court has cognizance of and power to do matters and things which it is empowered to do by any other ordinance in addition to the special powers conferred by the Criminal Procedure Code, and there are matters which are really civil but which for convenience are tried by the Police Court and to which accordingly the procedure of the Criminal Procedure Code is made applicable. One of such matters is a proceeding under Section 46 of Ordinance No. 197 (Labour). Section 46 (f) of that Ordinance provides as follows:—

"In the event of any person interested being dissatisfied with the decision or order of the Controller he may, within 14 days after such decision or order, file a memorandum of appeal therefrom in the Supreme Court; for the purposes of any such appeal the decision or order of the Controller shall be deemed to be a decision of a Police Court."

Under Ordinance No. 197 (Labour) therefore special provision is made for appeals to the Supreme Court and the construction of Section 295 of the Criminal Procedure Code does not arise. In fact it may well be argued that the very inclusion of such a provision strengthens the presumption that apart from such a provision no appeal would lie by virtue of the Criminal Procedure Code alone.

Notwithstanding the doubts which I have entertained on the construction of Section 295, I do not feel sufficiently confident to differ from the dicta of the judges in the cases cited above and from the considered judgment of the other members of this Court. There can I think be no doubt that the provisions of the Criminal Procedure Code relating to appeals are very ill considered. Certain sections, such as Section 298 (Stay of execution) and Section 303 (Decision on appeal) would appear *prima facie* to contemplate appeals in both civil and criminal matters. Section 303 is divided into 3 sub-sections (a) dealing with an appeal from an acquittal, (b) with an appeal from a conviction, and (c) with an appeal "from any other order." On examination, however, these sections do not necessarily apply to orders made in other than criminal matters. On the other hand Section 296 provides that the Court shall in every case transmit a copy of the record not only to the Supreme Court but also to the public prosecutor. This section can only refer to an appeal in a criminal matter, as in a civil matter the public prosecutor would not be interested, and I recently decided in the case of *Ong Hai Chui* vs. *the D. P. P.*, Special Appeal No. 1 of 1931 (unreported) that the proceedings under Section 48 of Ordinance No. 127 (Labour) being civil in character, the Public Prosecutor need not be served with the proceedings on appeal.

As to whether maintenance proceedings are civil or criminal, I have had the opportunity of reading the judgment of the President of the Court and his comments on the case of *Seaman* vs. *Burley* (1896, 2 Q.B. page 344) with which I respectfully agree.

There is also ample authority in India and in England that maintenance proceedings though criminal in form are really civil matters (*See Tokee Bibee* vs. *Abdool Khan*, I.L.R. 5 Calc. p. 536 at page 542, and *Regina* vs. *Berry*, 28 L.J. Magistrates Cases p. 86 and *Regina* vs. *Fletcher*, L.R.1, C.C.R. page 321) and I see no reason why a different rule should be applied in this Colony. I hold therefore that the proceedings under Section 38 (1) of Ordinance No. 96 (Minor Offences) are civil proceedings at all events up to the making of the maintenance order and that accordingly no appeal will lie.

It follows that the question as to whether or not the Public Prosecutor need be served in such cases does not arise.

It is also quite clear that though the proceedings are civil in character, no right to appeal is given by the Courts Ordinance. In civil matters an appeal is only provided from decisions of the District Court and under the provisions of the Civil Procedure Code. It would be quite anomalous to hold that an appeal would lie under the Civil Procedure Code when a District Court had taken cognizance of a quasi-criminal matter but that when a Police Court dealt with the same matter its decision would be unappealable.

As I have held that there is no appeal, a decision on the merits is really superfluous. I shall content myself by pointing out that where an appeal is brought against the exercise of a judicial discretion an Appellate Court will not generally interfere with the exercise of its discretion by the Lower Court unless it can be shown that such discretion was exercised on a

wrong principle or that the Lower Court failed to take into consideration any matters which it was required to consider under the provisions governing the exercise of such discretion. I am satisfied that in this case the learned District Judge fully considered all necessary matters.

Solicitors for the Appellant—*Allen & Gledhill.*

Solicitors for the Respondent—*S. Fung.*

[APPELLATE CRIMINAL JURISDICTION]

SPROULE, Ag. C.J., THORNE and TERRELL, JJ.

REX v. LIM AH SENG.

[SINGAPORE FIFTH ASSIZES CASE No. 19 of 1931]

Confession—Evidence Ordinance, Ss. 24, 25, 26—Criminal Procedure Code, Ss. 123, 261—Inadmissibility of Statement—"volunteered" and "voluntary" statements distinguished.

In order to render a confession admissible in evidence, a statement must be volunteered, not merely voluntary.

The rules and form prescribed by the Criminal Procedure Code for the recording of a confession of an accused person must be strictly adhered to and failure to follow the procedure so laid down will vitiate the confession or statement.

A confession containing answers to a set of questions in the nature of a cross-examination is inadmissible.

The accused, Lim Ah Seng, was tried on the 14th September 1931 before Stevens, J., on a charge of murder of one Thomas William Gunter and convicted of the same on the 15th September 1931. In the course of the trial a question was raised as to the admissibility of a confession made by the accused and the point was reserved under Section 312 of the Criminal Procedure Code for the consideration of the full Court. The Magistrate by whom the confession in this case was recorded, after having satisfied himself that no inducement, promise or threat had been held out to the accused, proceeded to interrogate him as follows:—

> "Do you want to confess?" to which the latter replied—"I am in your hands, anything you ask, I am prepared to answer. Otherwise I say nothing."

Held, the statement made by the accused in these circumstances though voluntary was not volunteered and therefore inadmissible.

The learned Magistrate then proceeded to address the accused a number of questions as to the circumstances of the death of Gunter, etc.

Held, such questions were improper as being in the nature of a cross-examination and the confession based on the answers thereto was wrongly admitted.

Vaux, for the accused.

Deputy Public Prosecutor, for the Crown.

SPROULE, Ag. C.J. We delivered oral judgments in this case, but are invited to record our reasons for reproduction in the law reports.

We had to decide a point reserved by Stevens J. regarding the admissibility in evidence of a confession by the Accused. We held that it was inadmissible; but we refused to quash the conviction upon the ground that there was ample evidence to justify it, apart from the confession.

We rejected the confession because it was clearly not volunteered by the Accused, and was moreover vitiated by what amounted to unfriendly and improper cross-examination by the recording Magistrate.

Some years ago, in consequence of the decision of a Full Bench in a similar case heard in Penang, instructions and a form were carefully drafted for the guidance of Magistrates, and these are in the great majority of cases happily and scrupulously followed by Magistrates.

In the present case, however, sections 24 to 26 of the Evidence Ordinance, and section 123 and other relevant sections of the Criminal Procedure Code, as well as the instructions and form abovementioned, were all completely ignored by the recording Magistrate. He apparently preferred to go by the light of nature and such recollection as he retained of the principles relating to the recording of such statements by an accused person.

In case of homicide, and therefore of life and death, such neglect or defiance of rules laid down for the guidance of Magistrates is strongly to be deprecated.

In the result, the Magistrate in this case satisfied himself that the Prisoner's statement was not induced by threat or coercion or promise of reward, and seems to have thought that no more was required of him. But it was his first duty to assure himself, that the statement to come was not only voluntary but also volunteered. How he interpreted that requirement of the law—if, indeed, it occurred to him; and his own record